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No. 08-995

Supreme Court, U.S.
FILED

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IN THE
Supreme Court of the United States

MOSTAFA ARAM AZADPOUR,

Petitioner,

v.

SUN MICROSYSTEMS, INC.,
MATRIX ABSENCE MANAGEMENT, INC.,
BABU TURUMELLA and NORMAN YEUNG,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

MICHAEL W. FOSTER
DAVID J. CARDIFF*
FOSTER & ASSOCIATES
3000 Lakeshore Avenue
Oakland, CA 94610
(510) 763-1900

* *Counsel of Record*

Counsel for Respondents

221292



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

- I. Whether Petitioner provided a compelling reason for the granting of this Petition for Writ of Certiorari pursuant to Rules of the Supreme Court, Rule 10.
- II. Whether the district court is deprived of jurisdiction when, subsequent to removal, a litigant dismisses the claims that gave rise to removal jurisdiction.

**CORPORATE DISCLOSURE STATEMENT
PURSUANT TO SUPREME COURT RULE 29.6**

Respondents Sun Microsystems, Inc. and Matrix Absence Management, Inc., state that they have no parent corporations, nor are there any publicly held companies that owns 10% or more of the stock or equity interest of either of these Respondents.

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STATEMENT OF THE CASE

A. Proceedings Below

On September 12, 2005, Petitioner filed his original complaint in the Superior Court of the State of California, Santa Clara County, alleging, in part, that Respondent Sun Microsystems, Inc. ("Sun") wrongfully denied him long-term disability benefits pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA," 29 U.S.C. section 1001 *et seq.*), 401k matching funds, and education-related reimbursements. Petitioner sought injunctive relief, including supervision of Sun's ERISA plans, and an order directing Sun to amend its "benefits manual." The remainder of the complaint sought relief for alleged employment discrimination in violation of the California Fair Employment and Housing Act ("FEHA," California Government Code section 12940 *et seq.*) against Sun and Petitioner's former supervisors and managers.

On October 11, 2005, Respondents removed the case to the United States District Court, Northern District of California, arguing that Petitioner's attempt to recover long-term disability benefits pursuant to ERISA fell "within the scope of ERISA's civil enforcement provisions," making the matter completely preempted by federal law and conferring original subject matter jurisdiction on the district court.

On November 1, 2005, Petitioner filed a motion to remand, in which he expressly conceded that his complaint implicated ERISA, but argued that "a state court is not explicitly barred from hearing an ERISA

related case” and that his ERISA claim was “not an overarching matter eclipsing other counts.” On January 30, 2006, the district court denied Petitioner’s remand motion on the grounds that subject matter jurisdiction existed.

Petitioner responded by filing a first amended complaint that removed all references to ERISA, but included claims for violation of the federal Worker Adjustment and Retraining Notification Act (“WARN,” 29 U.S.C. § 2101 *et seq.*) and Health Insurance Portability and Accountability Act of 1996 (“HIPAA,” 42 U.S.C. § 1320d *et seq.*) On April 24, 2006, Petitioner filed a “Motion to Consider Question of Jurisdiction,” in which he argued that, due to his voluntary dismissal of claims for disability benefits, the district court no longer had subject matter jurisdiction, and the matter should be remanded to state court. The court, construing Petitioner’s motion as a renewed motion to remand, issued an order dated June 13, 2006, denying said motion. *See* Petition, Appendix N(2). Specifically, the court held that the subsequent amendment of Petitioner’s complaint did not deprive the court of subject matter jurisdiction, if said jurisdiction existed at the time of removal and, regardless, Petitioner’s amendments contained claims based upon federal statutes, including WARN and HIPAA.

On July 21, 2006, Respondents filed a motion for summary judgment setting forth numerous grounds for dismissal, including Petitioner’s lack of evidence to support his claims, as well as various legal defenses. On September 26, 2006, the district court issued a written order granting Respondents’ motion in its entirety. *See* Petition, Appendix J.

On April 17, 2006, Petitioner initiated a second action against Respondents in state court, in which ERISA was not expressly mentioned, but in which Petitioner again sought relief for alleged denial of long-term disability benefits (under a breach of contract theory). Again, Respondents removed the matter and, on November 28, 2006, the district court denied Petitioner's motion to remand. *See* Petition, Appendix G (2). Thereafter, on April 2, 2007, the district court granted Respondent's motion to dismiss this second action, based largely on *res judicata* grounds. *See* Petition, Appendix G.

Petitioner appealed both the summary judgment order in his first action and the dismissal order in his second action, and those two appeals were consolidated into a single appellate docket. On July 11, 2008, the Ninth Circuit Court of Appeals affirmed both decisions of the district court. *See* Petition, Appendix D. On October 15, 2008, the circuit court denied Petitioner's petition for panel rehearing. *See* Petition, Appendix B.

B. Factual Summary

Sun hired Petitioner in May 2002 to work on its Millennium Project. In March 2003, less than a year after his hire, Petitioner took medical leave based on a foot injury. At some point thereafter, his claim morphed into one for depression and, in June 2003, Petitioner began receiving benefits under Sun's long-term disability plan, an ERISA covered benefits plan.

In August 2003, Respondent Matrix Absence Management, Inc. ("Matrix") determined that Petitioner no longer qualified for long-term disability benefits

based on reports by Petitioner's physician that he was fully able to work. Petitioner responded by submitting a "Progress Report," in which he disputed his own physician's conclusions. Thereafter, Matrix sought and received a further report from Petitioner's physician confirming that Petitioner could immediately return to work. Thus, on September 30, 2003, Matrix notified Petitioner that, as of August 15, 2003, he was no longer eligible for long-term disability benefits.

Rather than returning to work, Petitioner appealed Matrix's decision by requesting an Independent Medical Examination ("IME") under the appeal provisions of the long-term disability plan. In December 2003, the IME report again concluded that Petitioner could return to work effective January 22, 2004. Nonetheless, Petitioner again refused to return to work, claiming that he was totally disabled.

In early March 2004, notwithstanding Petitioner's continued assertion that he was totally disabled, Sun's human resources department attempted to engage him in a reasonable accommodation interactive process. As part of this process, Sun requested a return to work certification verifying the existence of a qualifying disability, and asked Petitioner to state the anticipated duration of the disability, identify the extent to which said disability limited essential job functions, and provide any specific recommendations on accommodation. Petitioner refused to provide any such information, stating instead that he would return to work only if he was assigned a new manager.

In April 2004, Sun announced the cancellation of the Millennium Project. Sun advised Petitioner that he should provide the medical information requested as part of its interactive process, and return to work to look for other opportunities within the company. Petitioner responded that he had not been released to work from his physician and, thus, he refused to provide the information and/or seek other job opportunities within Sun. Petitioner's position was eliminated as a result of the cancellation of the Millennium Project, and his employment was terminated after he refused to return from leave for over 24 months.

SUMMARY OF ARGUMENT

Despite the complete absence of any meaningful reason for this matter to be heard by the United States Supreme Court, this Petition rehashes unmeritorious claims related to the district court's refusal to remand a case after Petitioner amended his complaint. This case does not involve a conflict in decisions made by different Circuit courts, an important federal question decided in a way that conflicts with a decision by a state court of last resort, an important question of federal law that has not been, but should be, settled by this Court, or a departure from well-settled law calling for an exercise of this Court's supervisory power.

Moreover, the decision about which Petitioner complains was properly reached by the district court and properly affirmed on appeal. Specifically, Petitioner contends that the district court erred in refusing to remand his complaint, despite that it contained allegations of ERISA violations, because he removed said allegations in subsequent amendments. Petitioner

ignores long standing precedent that a district court may retain jurisdiction regardless of pleading amendments, if jurisdiction existed at the time of removal. Finally, Petitioner distorts the ruling of the district court to argue that ERISA cannot preempt claims brought under state anti-discrimination laws, despite that said court made no such ruling. Instead, summary judgment on Petitioner's discrimination claims was granted based on the lack of evidence in support submitted by Petitioner.

REASONS FOR DENYING THE PETITION

I. Absence Of Compelling Reasons To Grant Petition

The decisions of the courts below do not involve a conflict with any decision of this Court, any courts of appeal, or any state courts of last resort. Moreover, Petitioner does not allege that the case involves an important question of federal law that has not been, but should be, settled by this Court. Instead, Petitioner merely asserts that the district court and Ninth Circuit "got it wrong" when they concluded that subject matter jurisdiction existed in this case. Further, Petitioner contends that the district court misapplied well-settled law to this particular set of facts when granting summary judgment in favor of Respondents. These are grounds on which a petition is "rarely granted." Accordingly, the Petition fails to establish "compelling reasons" for review, and must be denied.

II. Petitioner's Subject Matter Jurisdiction Claims Are Wholly Without Merit

Throughout the litigation and appeals process, Petitioner has consistently failed to convince any court that the district court reached a wrong decision on an issue it faces on a daily basis: federal subject matter jurisdiction. At the time Respondents removed Petitioner's state court complaint to the district court, ERISA preemption existed – this has never been disputed by Petitioner. The law is clear that, where removal jurisdiction exists, the district court may elect to retain jurisdiction, even where the original cause of action that prompted removal is later dismissed.

As Respondents have consistently pointed out in response to various motions and the two appeals filed by Petitioner, preemption under ERISA Section 514(a) is very broad. *See, e.g., DeVoll v. Burdick Painting, Inc.*, 35 F.3d 408, 412 (9th Cir. 1994). ERISA, by its terms, “supersedes any and all state laws insofar as they . . . relate to any employee benefit plan. . . .” 29 U.S.C. § 1144(a). ERISA's preemption clause contains “deliberately expansive language” that was “designed to establish pension plan regulation as exclusively a federal concern.” *DeVoll, supra*, 35 F.3d at 412, *quoting Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 111 S.Ct. 478, 482, 112 L. Ed. 2d 474 (1990) (internal quotations omitted). The Ninth Circuit has expressly held that this clause preempts state law claims founded on theories of negligence, breach of contract, breach of covenant, and civil conspiracy. *See, e.g., DeVoll*, 35 F.3d at 412, *citing Ellenburg v. Brockway, Inc.*, 763 F.2d 1091, 1095 (9th Cir. 1985) (breach of contract); *Lea v. Republic Airlines, Inc.*,

903 F.2d 624, 631-32 (9th Cir. 1990) (negligence). Under the circumstances of this case, there was simply no dispute that many of Petitioner's state law claims in both lawsuits implicated ERISA preemption.

Petitioner contends that his decision to amend his pleadings post-removal required the district court to remand the matter to state court. Yet, as confirmed by the Ninth Circuit in this case, for purposes of determining whether a district court retains jurisdiction of a case following removal, a litigant's amendment of pleadings or dismissal of particular causes of action does not control. Simply put, jurisdiction is determined at the time of removal, and not thereafter. *See Reddam v. KPMG LLP*, 457 F.3d 1054, 1058 n. 6 (9th Cir. 2006). Thus, even had Petitioner, subsequent to removal, completely excised all allegations that implicated ERISA, and not included his WARN or HIPPA claims (leaving only state court claims), the district court would not have been deprived of subject matter jurisdiction. *See, e.g., Sparta Surgical Corp. v. National Ass'n of Securities Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998) (a "plaintiff may not may not compel remand by amending a complaint to eliminate the federal question upon which removal was based.")

III. Petitioner Distorts The District Court's Ruling On His FEHA Claim

In his Petition, Petitioner suggests that the district court granted summary judgment on his FEHA discrimination claims based on ERISA preemption. Nothing could be further from the truth.

As stated in the district court's order on summary judgment, Petitioner's disability discrimination claim was not dismissed on procedural grounds but, instead, the court expressly held that no evidence existed that Sun failed to engage in the interactive process, failed to provide a reasonable accommodation, or otherwise discriminated against Petitioner. The court stated:

In the current case, the Court finds that Sun provided reasonable accommodations to Plaintiff and that Sun properly engaged in the interactive process. Defendants not only provided Plaintiff with the opportunity to take extended medical leave, but also engaged in an interactive process in attempting to help Plaintiff return to work. (Cites omitted.) Despite Sun's willingness to assist Plaintiff, Plaintiff failed to obtain and/or provide Sun with the required return-to-work authorization. . . . Moreover, the Court finds Plaintiff has failed to present any evidence indicating that Sun failed to accommodate him. *See* Petition, Appendix J (15 & 16).

As ERISA preemption was not the grounds for dismissal of Petitioner's FEHA claims, Petitioner's argument is without merit.

CONCLUSION

Petitioner has not met his burden to establish any compelling reasons for this court to grant the Petition. Therefore, Respondents respectfully request that the Petition be denied.

Respectfully submitted,

MICHAEL W. FOSTER
DAVID J. CARDIFF*
FOSTER & ASSOCIATES
3000 Lakeshore Avenue
Oakland, CA 94610
(510) 763-1900

Counsel for Respondents

* *Counsel of Record*